

HOUSE BILL 762
DEFICIT REDUCTION ACT (DRA) - FALSE CLAIMS ACT
FACT SHEET

EXHIBIT 15
2/23/07
762

HB 762 would amend the Montana False Claims Act under Title 17 to include specific language that the Department of Public Health and Human Services (DPHHS) and the Department of Justice (DOJ) believe will comply with certain enumerated requirements published by the U.S. Office of Inspector General (OIG).

These requirements provide specific criteria that Montana's False Claims Act must contain before the OIG can determine that Montana qualifies for a financial incentive regarding Medicaid recoveries, as provided under Section 6032 of the Deficit Reduction Act of 2005.

The financial incentive is the opportunity to retain 10 percent of any recovery made under the revised "False Claims Act". This incentive decreases the Federal Medical Assistance Percentage (FMAP) by 10 percentage points for recoveries from legal actions brought pursuant to the Montana False Claim Act. For example: If an action was brought under the FCA that amounted to 100M dollars in Medicaid recovery, the State is currently required to send approximately 70M back to the federal government. Under the new provisions of the revised False Claim Act, we would only be required to send back 60M dollars. This is an opportunity for a potential 10M savings to the general fund for Montana. This opportunity of course is contingent upon review and approval of the Montana False Claims Act by the OIG.

This bill makes the necessary changes to the Montana False Claims Act to be in compliance with the criteria outlined by the Health and Human Services' Office of Inspector General (HHS OIG) and the U.S. Department of Justice.

The changes to the Montana False Claims Act provide that:

- No specific intent to defraud is required;
- provide that a person may bring a civil action on behalf of the person and the government, also known as a "qui tam" action (see definition below);
- amend the definition of "government attorney" to mean only the Attorney General, and remove reference to the chief attorney for a governmental entity;
- require the Attorney General to review and investigate all alleged false claim violations and allow the Attorney General to file a civil action for violation of the False Claims Act;
- allow the Attorney General to intervene in a complaint filed by a person;
- amend definition of "person" to include legal or business entities (a legal entity would include county and local governments);
- provide that if the government attorney intervenes, the government attorney has primary responsibility in the action, but the person initiating the action has the right to continue as a party to the action;
- change the time period in which a complaint may be filed;
- require filing an action under seal for at least 60 days;
- provide for review of the sealed complaint by the Attorney General;
- provide that if the government attorney initially declines to intervene, the person bringing the action can conduct the action and the government attorney can intervene at a later date for good cause; if the government attorney intervenes, the amount of proceeds a person who brought an action increases from 10% to at least 15% but not more than 25%;
- if the government attorney does not intervene, increases the recovery floor from 15% to not less than 25%, and decreases the maximum recovery amount from 50% to not more than 25%; sets a floor for civil penalties of not less than \$5,000 per violation;
- and places some limits on recovery of damages when a defendant makes a timely self-disclosure and cooperates fully with the government attorney.

DEFINITIONS:

"Qui tam" - When a private citizen brings an action to enforce the Act the citizen is acting on behalf of the government as well as on his own behalf. Such actions by a private citizen are known as "qui tam" actions or "whistleblower" actions. The citizen is sometimes said to be acting as a "private attorney general" because the statute authorizes the citizen to initiate a civil complaint alleging acts of fraud against a governmental entity on behalf of the people at large. As a reward for bringing the action, the citizen receives a percentage of any penalties assessed against the defendants and the government receives the remainder.